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Human Rights Committee

Concluding observations on the second periodic report of Cambodia

Addendum

Information received from Cambodia on follow-up to the concluding observations*

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Recommendation No. 11

1. In the Kingdom of Cambodia, murdering a person shall be prohibited by law. It is considered as case of murder as stipulated within the penal code and it shall be punishable by imprisonment. In recommendation No. 11, the committee pointed that in Cambodia it did exist the act of murdering people out law committed by military officers, police officials, and gendarmerie forces. Regarding to this case, the Royal Government of Cambodia kindly confirms that military officers, police officials, and gendarmerie forces in whatever circumstances are not entitled to murder any person. The act of murdering people in the course of performing his/her duties committed by competent authorities shall be considered as the act of murdering as stipulated in article 204 of the Penal Code. Any person committed this act of murdering shall be punishable from 15 (fifteen) to 30 (thirty) years of imprisonment whenever this offence is committed by a public official in the performance of his or her duties or in connection herewith.

2. Royal Government of Cambodia acknowledges that while performing some of their duties, the police and gendarmerie officials may cause some incidents of death:

1/.On 11 December 2009, in Rattanak Kiri province, a suspect using violence against his own father. The suspect even used the sickle to attack one gendarmerie officer causing him injured on two spots. At the same time, the suspect also snitched the raffle from the gendarmerie officer, using that same gun firing that officer. Under that circumstance and trouble, the gendarmerie intervention forces arrived, trying to save the life of the gendarmerie officer under the attack and incidentally made the suspect died on the spot while firing and the attack him back.

2/.On 23 July 2012, in Pouk district, Siem Reap province, a group of 04 burglars equipped with 03 guns, having 05 citizens as hostages after they robbed the jewelry sellers. At the time the joint forces of police and gendarmerie arrived at the spot for the rescue operations, the robber shot one hostage to dead and two were injured, while trying to fire back to our joint armed forces. To protect themselves from the attack, the police and gendarmerie forces fired back causing 03 robbers died and 01 injured.

3/.On 11 December 2015, in Thum Tbaung village, Sangkat Punhea Pun, Khan Prek Pnov, Phnom Penh capital, a group of 06 burglars killing the victim to rob a motorbike. The burglars opened fire on the gendarmerie force who were on the intervention mission. To protect themselves and forcing the burglars to drop off their guns and surrendered, the gendarmerie forces opened fire, where 02 suspects were shot to dead.

3. All the cases mentioned above, those who died while attacking against competent officials where the forensics was conducted by the forensics specialized team under the coordination and examination of the representatives of the concerned prosecutors and the local competent authorities before the bodies were given to the family members for the funeral arrangement.

4. All the death happened in the above mentioned event were not considered as act of murdering people out law. These event happened because the offenders having weapons in their hands, trying to attack against the competent authorities. In this case, the competent authorities were eligible to attack back to protect themselves legally. In such an operation, sometimes it caused the officials dead or injured: -On 27 January 2016, the gendarmerie officials opened an operation to crackdown the drug deal in Trapeang Chhouk village, Sangkat Teuk Thla, Khan Sen Sok, Phnom Penh capital. In this operation, the drug dealers opened fire against our forces, causing 01 gendarmerie officer dead, and 02 other injured. In that situation, the gendarmerie officers opened the attack back, causing one leader of

drug dealers dead, and arrested 04 drug dealers and the suspects were arrested and the case was further sent to the court.

Recommendation No. 13

5. In the Kingdom of Cambodia, the court is an independent body, playing the role to deal with all complaints and cases as stipulated in new article 128 of the Constitution of Cambodia: -The power of courts ensure that there is no bias and ensure to protect the rights and freedom of all Cambodian citizens. -The power of courts covers all cases including the administrative cases. -This privileges and powers have been given to the Supreme Court, and all sectors and all three-tiered court system.

6. The above provision certifies that the court body is an independent mechanism used for filing and complaints management. This body is empowered to conduct investigation in response to all accusations and all complaints including the case of torture as well. The prosecution office is the only single body empowered to file a complaint before the court as stipulated in new article 131 of the Constitution.

7. In Cambodia, any person committing any act of tortures is considered as an offense, which shall be punishable in accordance with article 213 of the Penal Code, the offence defined in article 210 (torture and acts of cruelty) of this Code stipulating the punishable of 10 (ten) to 20 (twenty) years of imprisonment in the case that the offence committed by the public official in the performance of his or her duties or in connection herewith.

8. Judicial Police Officer is authorized to examine offences, identifying and arresting offenders as well as to collect all related evidences. In accordance with the laws, the judicial police officials can detain the suspects within 48 hours in the detention room under the police custody for interrogation. After this, within the next 24 hours, the detainee is eligible to meet with their lawyer or any person he/she selects to meet with as stipulated in article 98 of the Criminal Procedure Code. At the same time, the operations of judicial police officials including the interrogation to get the information from the suspect shall be under the management and coordination from the prosecutor. Therefore, the judicial police official cannot use any form of tortures in order to get the confession from the suspect at all.

9. In the Kingdom of Cambodia, in all cases, all confession obtained from any acts of torture or ill treatment shall not be considered valid in the court as stipulated in the provisions as follows: Article 8.5: Confession obtained by physical or mental force shall not be admissible as evidence of guilt. Article 321.4: A confession shall be considered by the court in the same manner as other evidence. Declaration given under the physical or mental duress shall have no evidentiary value. Base l on the above legal basis, there is no reason for judicial police officials to use torture against the suspect to get them confessed since the confession obtained from such acts shall not be acknowledged as evidences.

10. Despite having the provisions to prohibit all forms of torture used to obtain confession, some suspects denying their confession given at the police custody before the judges; claiming that those confessions were given at the police custody due to the torture or the coercion done by the police.

11. Some claims were made without any certainty or ground. The suspects could not have any evidence to confirm the torture or the coercion was made against him/her to get the confession. In this regards, the suspect claims himself/herself aiming to be free from any accusation related to his/her case. In such circumstances, the court, based on such claims, have no reason to trust the suspect and therefore the court could not use such reason to let him/her free at all. However, the judges do not totally depend on the confession of the suspect done at the police custody alone to make the accusation on the suspect. In addition to this, the judges shall try to collect and have more additional evidences for verification

and validation. In the case that the contrast evidences are found, the judges shall reject those confession where the new evidences obtained shall be used as the legal ground basis for their decision.

12. In some claims, the suspects having the evidences to prove the bruise confirming the case of torture. In such a case, the court shall conduct the investigation, making accusation and prosecution the concerned authority involved the case in compliance with their acts committed. Case 1: The Court of First Instance of Sihanouk province issued the verdict No. 27 dated 25 July 2010 on the case of making intentional act of violence committed by 05 judicial police officials there. Case 2: The Court of First Instance of Sihanouk province issued the verdict No. 30 dated 23 September 2013 related to the case of making an act of intentional violence committed by 02 judicial police officials there.

13. The claim made by some accused confirming that the police using torture on him/her to get the confession where the court could not confirm the evidence, which is considered as the case of doubt both in term of using torture and the ground rule for accusation, the court is to be resolved in favor of the accused. This case was seen done before the investigating judges of the Oudor Meanchey provincial court of first instance. One of the accused said that the police used the torture on him, but the evidence could not be found to support his claim where the judges could not find the evidences to put more weight on the accusation, therefore the judges decided the lift the accusation on the case. At the same time, there were some competent authorities using acts of violence against the offenders while on operations: On 1st July 2015, in Tabe village, Sangkat Bavet, Bavet municipality, Svay Rieng province, an operation was carried out to arrest the suspect involving the case of using an act of violence. During the course of operations, a policeman named SEK PUTHEA NUSITH committed an act of violence against a suspect named Nuon Sopheaktra causing him injured. The policeman named SEK PUTHEA NUSITH was accused of making an act of intentional violence. That policeman was punishable for 03 (three) years imprisonment, which the suspension of this imprisonment was made, and paying 05 (five) million Riel as the compensation in compliance with the verdict No. 107 dated 29 August, 2016.

14. In accordance with article 6 of Criminal Procedure Code stipulated that any person who claims to be a victim of an offence can file a complaint to the court which is an independent body, empowered to conduct the investigation as well as to deal with such complaint. At the same time, the victim of the torture can file the complaint to demand for the compensation as stipulated in article 2, paragraph 3 of Criminal Procedure Code stipulated the purpose of the civil action is to seek compensation for injuries to victims of an offense and with this purpose to allow victims to receive reparation corresponding with the injuries they suffered.

15. After the ratification was made on the Optional Protocol of the Convention against Torture, the Royal Government of Cambodia set up a National Committee for the Prevention of Torture as stipulated in Sub-Decree No. 122 dated 07 August 2009 having the mission to control and examine regularly at all detention and correctional centers where all people whose rights have been deprived. This is to ensure that their basic right has been strictly adhered to aiming to act against all forms of torture and other cruel, inhuman or degrading treatment or punishment. Besides this, in the Kingdom of Cambodia there are some other mechanisms having the power and authority to oversee and examine the detention room, cells, and all the places having been accused of involving the uses of any acts of tortures. Those mechanisms in place include: prosecutors, investigating judges of court of first instance, general prosecutor attached to Appeal Court, and Chamber of Investigation of Appeal Court. At the same time, Cambodian Human Right Committee is also empowered with the mission to oversee and examine all detention rooms and correctional centers.

Recommendation No. 21

16. In Cambodia, murdering any person is prohibited by laws and it is considered as an act of murder, which shall be punishable, according to the laws as stipulated in Article 199 of the Criminal Code. "Murder shall mean the willful killing of another person with or without a weapon with no aggravating circumstances in Article 200 (definition of premeditated murder) to Article 205 (Murder accompanied by torture, cruelty or rape) of this Code." Murder shall be punishable by imprisonment from 10 (ten) to 15 (fifteen) years.

17. Regardless murder or killing another person, for all criminal offences, competent authorities always conduct investigations, which are the authority of the judicial police officers as prescribed in Criminal Procedure Code: Article 56.2: The judicial police officer shall have the duty to examine felonies, misdemeanors and petty offences to identify and arrest offenders and to collect evidence. Article 74.1: A judicial police officer who receives a complaint shall either immediately initiate a police inquiry or send the record of the complaint to the Prosecutor who will make a decision on how to proceed. In summary, the murder happens to the journalists, human rights defenders and other civil society organization activists and even happens to ordinary people, competent authorities; in particular, the judicial police shall immediately initiate a police inquiry pursuant to the duties, as stated in the provision above in spite of no complaint like: On 31 January 2014, in Kbal Anlong village, Peam Chhkoak commune, Chulkiri district, Kampong Chhnang province, 06 suspects beat Mr. Suon Chan, Meakea Khmer Newspaper's journalist, who was later deceased at the hospital. 06 suspects fled; however, they were accused of murder and each of them was convicted by thirteen-year of imprisonment and a monetary fine of 5,000,000 (five million) Riels, provided for victim's family in accordance with the judgment verdict No. 27 dated 11 November 2014 of Kampong Chhnang provincial court of first instance.

18. Intimidation means frightening in the form of threats, which shall be protected by the laws and shall be punishable pursuant to the form of threats as stipulated in Criminal Code as follows:

Article 231: A threat shall be punishable by imprisonment from 01 (one) month to 06 (six) months and a monetary fine from 100,000 riels to 1,000,000 riels.

Article 232: A threat accompanied by extortion shall be punishable by imprisonment from 06 (six) months to 02 (two) years and a monetary fine from 1,000,000 riels to 4,000,000 riels.

Article 233: A death threat shall be punishable by imprisonment from 06 (six) months to 02 (two) years and a monetary fine from 1,000,000 riels to 4,000,000 riels.

19. Attack shall mean damaging integrity of personal appearance in the form of acts of violence or causing wounds, which shall be protected by the laws and shall be punishable as follows:

Article 217: Intentional acts of violence shall be punishable by imprisonment from 01 (one) year to 03 (three) years and a monetary fine of 2,000,000 riels to 5,000,000 riels.

Article 228: Less severe acts of violence shall be punishable by a monetary fine of 5,000 riels to 100,000 riels.

Article 236: Involuntary bodily harm shall be punishable by imprisonment from 06 (six) months to 02 (two) years and a monetary fine from 1,000,000 riels to 2,000,000 riels.

20. Regarding the aforementioned case, any person regardless journalists, human rights defenders and other Civil Society Organization activists suffered from the acts mentioned above can file a complaint requesting for protection or intervention as determined in Article

6 of Criminal Procedure Code, "Any person who claims to be a victim of an offence can file a complaint." Therefore, the journalist, human rights defender and other Civil Society Organization activists who claim to be the victim of the threats or any act causing injury shall file a complaint to competent authorities who shall take actions in compliance with the applicable laws as prescribed in Article 74 of Criminal Procedure Code, "A judicial police officer (competent authority) who receives a complaint shall either immediately initiate a police inquiry or send the record of the complaint to the Prosecutor who will make a decision on how to proceed."

21. Journalists, human rights defenders and other Civil Society Organization activists as well as other persons shall be equal before the laws. Journalists, human rights defenders and other Civil Society Organization activists who break the laws shall be equally punished.

22. In Cambodia, expression of one's opinion is not considered as an offence; however, the use of expression of opinion or profession as a means to commit an act prohibited by the laws is considered an offence that shall be punishable.

23. Journalists, human rights defenders and some Civil Society Organization activists have been convicted by the court by imprisonment and by means of a monetary fine in accordance with the applicable laws so far. This conviction is not made as a means to scare or discourage the journalists, human rights defenders and other Civil Society Organization activists. These convictions have been done against them because they have used their profession as a means to commit offences with the following cases:

- A journalist used his/her profession to extort money from other persons. The court ruled on conviction with 14 cases in accordance with Criminal Law.
- A journalist used his/her profession to intimidate other persons. Indeed, on 29 October 2009, Prak Sokhon, a director of Kampuchea Men Newspaper went to gather information and he then confiscated saws from the people in Chhuok Kranhah village, Chhuok Sor commune, Kampong Tralach district, Kampong Chhnang province. Moreover, the people were required to pay 400,000 (four hundred thousand) riels in order to redeem the saws from him. In this case, Prak Sokhon was accused of extortion and was sentenced by the court with two-years imprisonment; but this punishment was suspended, and a compensation of 1,200,000 (One million two hundred thousand) Riels pursuant to the judgment verdict No. 39 dated 26 October 2016 of Kampong Chhnang provincial court of first instance.
- A Civil Society Organization activist used his/her profession to transport forest by-product illegally. 01 case was handled by the court leading up to conviction.

24. In Cambodia, defamation has been defined as an offence that shall be punishable in conformity with the Criminal Law. This restriction aims to protect reputation or honor of person or institution as this article is consistent with paragraph 3 of article 19 of Covenant on Civil and Political Rights as stipulated that, "The exercise of the rights provided in paragraph 2 of this article (the right to freedom of expression) carries with special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:"

A. For respect of the rights or reputation of others

B. For the protection of national security or the public order or public health or morals.

25. Article 304- Defamation under Criminal Code of Cambodia stipulated that: Defamation shall mean any allegation or charge made in bad faith, which tends to injure the honor or reputation of a person or an institution. Defamation shall be punishable with

100,000 (One hundred thousand) Riels to 10,000,000 (Ten million) Riels if it is committed by any of the following means:

i. Any words whatever uttered in a public place or in a public meeting;

ii. Written document or pictures of any type released or displayed to the public;

iii. Any audio-visual communication intended for the public.

26. Defining defamation as a criminal offence with the monetary fine is the restriction of the duties and responsibilities of persons who commit offences to recognize their acts, as it is consistent with paragraph 3 of article 19 of Covenant on Civil and Political Rights. Indeed, it doesn't restrict the rights of the freedom of expression but it is a legislative mechanism to prevent any abuse and effect on reputation, dignity and privacy of person to be protected by the laws. Therefore, Cambodia has not left out defamation from criminal offence at the moment.

27. In Cambodia, reviewing the legislation, which has been already enforced, is the authority of the Constitutional Council to be undertaken up on the request. Thus, all legislations with conflicting opinion shall be reviewed by the Constitutional Council and declared over constitutionality of these legislations. If any provision is claimed to be contradicted to the essence of the constitution by the Constitutional Council, this provision shall not be enforced.

28. The Draft Law on Cyber Crime is in the process of being reviewed and revised by the Ministry of Interior in collaboration with FBI of the United States of America. This draft law will be much better in accordance with the conditions of article 19 of paragraph 3 and article 22 of Covenant on Civil and Political Rights as set out in Article 1 of this draft law, "This law is drafted with the purpose to determine all preventive measures and combat all kinds of offences committed by computer system." According to the meaning reflected in Article 1 under this draft law, it does not have any purpose to impede or restrict the use of computer system with good faith. On the other hand, this draft law generally has the objective to protect national security, public order, public health and morals as prescribed in article 2, "This law has the objective to ensure the enforcement of law, anti-cybercrime and combat all kinds of offenses committed by computer system, ensure safety and protect legitimate interest in using and the development of information technology."

29. The Law on Associations and Non-Governmental Organizations (NGOs) has been promulgated by Royal Kram No. 0815/010 dated 12 August 2015. This law consists of the following specific purposes and objectives:

Article 1: This law aims to safeguard the right to freedom of establishing associations and NGOs in Cambodia in order to protect their legitimate interest of individuals and the public interest and also promote cooperation in partnership between associations and/or NGOs and the public authorities.

Article 2: The purposes of this law are to determine legally recognized formalities for associations and NGOs, as well as to establish the relationship between associations and NGOs and public authorities to develop Cambodian society.

30. The content of both provisions mentioned above indicates that the Law on Associations and NGOs doesn't have any purpose to restrict the rights to freedom to conduct any activities and the establishment of associations and NGOs. The purpose of this law is to help safeguard associations and NGOs to gain legitimate interest. Furthermore, it aims at establishing better cooperation between associations or NGOs with public authorities to ensure the conduct of activities with responsibilities.

31. Therefore, the Law on Associations and NGOs doesn't have purpose and objective to restrict the establishment and conduct of activities of associations and NGOs. After this

law has been promulgated coincide with recognition of registered associations and NGOs, over 300 new associations and NGOs have been established and registered.

32. Article 25 of this law has required associations and NGOs to submit a copy of their working activity report and annual financial report to the Ministry of Interior and Ministry of Economy and Finance. This requirement doesn't limit or restrict the activities of associations or NGOs. In this regards, it only seeks clarity and make sure that all activities and the use of funds among association or NGOs have been done for the sake of social interests, aiming to guarantee the public security, making sure that the use of funds for financing terrorism, or money laundering are totally prohibited and under strong control.